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IN THE NAME OF GOD
THE BENEFICENT, THE MERCIFUL

MEMORANDUM OF AGREEMENT ON THE ANCESTRAL DOMAIN ASPECT OF THE GRP-MILF TRIPOLI AGREEMENT ON PEACE OF 2001

The Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF) herein referred to as the "Parties" to this Agreement,

TERMS OF REFERENCE

The Agreement for General Cessation of Hostilities dated July 18, 1997 Between the GRP and the MILF, and its Implementing Administrative and Operational Guidelines;

The General Framework of Agreement of Intent Between the GRP and the MILF dated August 27, 1998;

The Agreement on the General Framework for the Resumption of Peace Talks Between the GRP and the MILF dated March 24, 2001;

The Tripoli Agreement on Peace Between the GRP and the MILF dated June 22, 2001;

The Tripoli Agreement Between the GRP and the Moro National Liberation Front (MNLF) dated December 23, 1976 and the Final Agreement on the Implementation of the 1976 Tripoli Agreement Between the GRP and the MNLF dated September 2, 1996;

Republic Act No. 6734, as amended by R.A. 9054, otherwise known as "An Act to Strengthen and Expand the Autonomous Region in Muslim Mindanao (ARMM)";

ILO Convention No. 169, in correlation to the UN Declaration on the Rights of the Indigenous Peoples, and Republic Act No. 8371 otherwise known as the Indigenous Peoples Rights Act of 1997, the UN Charter, the UN Universal Declaration on Human Rights, International Humanitarian Law (IHL), and internationally recognized human rights instruments; and

Compact rights entrenchment emanating from the regime of dar-ul-mua'hada (or territory under compact) and dar-ul-sulh (or territory under peace agreement) that partakes the nature of a treaty device. For the purpose of this Agreement, a "treaty" is defined as any solemn agreement in writing that sets out understandings, obligations, and benefits for both parties which provides for a framework that elaborates the principles declared in the Agreement.

HAVE AGREED AND ACKNOWLEDGED AS FOLLOWS:

COPY NO. 5 OF 15 COPIES

CONCEPTS AND PRINCIPLES

1. It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as "Bangsamoros". The Bangsamoro people refers to those who are natives or original inhabitants of Mindanao and its adjacent islands including Palawan and the Sulu archipelago at the time of conquest or colonization and their descendants whether mixed or of full native blood. Spouses and their descendants are classified as Bangsamoro. The freedom of choice of the Indigenous people shall be respected.

2. It is essential to lay the foundation of the Bangsamoro homeland in order to address the Bangsamoro people's humanitarian and economic needs as well as their political aspirations. Such territorial jurisdictions and geographic areas being the natural wealth and patrimony represent the social, cultural and political identity and pride of all the Bangsamoro people. Ownership of the homeland is vested exclusively in them by virtue of their prior rights of occupation that had inhered in them as sizeable bodies of people, delimited by their ancestors since time immemorial, and being the first politically organized dominant occupants.

3. Both Parties acknowledge that ancestral domain does not form part of the public domain but encompasses ancestral, communal, and customary lands, maritime, fluvial and alluvial domains as well as all natural resources therein that have inured or vested ancestral rights on the basis of native title. Ancestral domain and ancestral land refer to those held under claim of ownership, occupied or possessed, by themselves or through the ancestors of the Bangsamoro people, communally or individually since time immemorial continuously to the present, except when prevented by war, civil disturbance, force majeure, or other forms of possible usurpation or displacement by force, deceit, stealth, or as a consequence of government project or any other voluntary dealings entered into by the government and private individuals, corporate entities or institutions.

4. Both Parties acknowledge that the right to self-governance of the Bangsamoro people is rooted on ancestral territoriality exercised originally under the suzerain authority of their sultanates and the Pat a Pangampong ku Ranaw. The Moro sultanates were states or karajaan/kadatuan resembling a body politic endowed with all the elements of nation-state in the modern sense. As a domestic community distinct from the rest of the national communities, they have a definite historic homeland. They are the 'First Nation' with defined territory and with a system of government having entered into treaties of amity and commerce with foreign nations. The Parties concede that the ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights and resources as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people.

COPY NO. 5 OF 15 COPI

5. Both Parties affirm their commitment to mutually respect the right to one's identity and the parity of esteem of everyone in the political community. The protection of civil rights and religious liberties of individuals underlie the basis of peace and justice of their totality of relationships.

6. Both Parties agree that the Bangsamoro Juridical Entity (BJE) shall have the authority and jurisdiction over the Ancestral Domain and Ancestral lands, including both alienable and non-alienable lands encompassed within their homeland and ancestral territory, as well as the delineation of ancestral domain/lands of the Bangsamoro people located therein.

7. Vested property rights upon the entrenchment of the BJE shall be recognized and respected subject to paragraph 9 of the strand on Resources.

TERRITORY

1. The Bangsamoro homeland and historic territory refer to the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, and the aerial domain, the atmospheric space above it, embracing the Mindanao-Sulu-Palawan geographic region. However, delimitations are contained in the agreed Schedules (Categories).

2. Toward this end, the Parties enter into the following stipulations:

   a. The GRP and MILF as the Parties to this Agreement commit themselves to the full and mutual implementation of this framework agreement on territory with the aim of resolving outstanding issues that emanate from the consensus points on Ancestral Domain.

   b. The Parties confirm their understanding that the mutual goal of reaching an agreement on Bangsamoro territory specific to mapping the outlying borders and the boundaries affecting local government units will lead to consolidation of the agreed texts on the Ancestral Domain Strands.

   c. The Parties affirm that the core of the BJE shall constitute the present geographic area of the ARMM, including the municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte that voted for inclusion in the ARMM during the 2001 plebiscite.

   d. Without derogating from the requirements of prior agreements, the Government stipulates to conduct and deliver, using all possible legal measures, within twelve (12) months following the signing of the MOA-AD, a plebiscite covering the areas as enumerated in the list and depicted in the map as Category A attached herein (the "Annex"). The Annex constitutes an integral part of this framework agreement. Toward this end, the Parties shall endeavour to complete the

negotiations and resolve all outstanding issues on the Comprehensive Compact within fifteen (15) months from the signing of the MOA-AD.

e. The areas covered by Category B are reflected on a map and list attached herein as agreed to by the Parties. Category B (the "Special Intervention Areas") refers to conflict affected areas outside the BJE which shall be the subject of special socio-economic and cultural affirmative action implemented by the Central Government pending the conduct of a plebiscite not earlier than twenty-five (25) years from the signing of the Comprehensive Compact to determine the question of their accession to the BJE. The areas reflected are subject to further negotiations by the Parties. The Annex constitutes an integral part of this framework agreement.

f. Internal Waters:
The BJE shall have jurisdiction over the management, conservation, development, protection, utilization and disposition of all natural resources, living and non-living, within its internal waters extending fifteen (15) kilometers from the coastline of the BJE area.

g. Territorial Waters:

(1) The territorial waters of the BJE shall stretch beyond the BJE internal waters up to the Republic of the Philippines (RP) baselines south east and south west of mainland Mindanao. Beyond the fifteen (15) kilometers internal waters, the Central Government and the BJE shall exercise joint jurisdiction, authority and management over areas and all natural resources, living and non-living contained therein. The details of such management of the Territorial Waters shall be provided in an agreement to be entered into by the Parties.

(2) The boundaries of the territorial waters shall stretch beyond the 15-km BJE internal waters up to the Central Government's baselines under existing laws. In the southern and eastern part of the BJE, it shall be demarcated by a line drawn from the Maguling Point, Palimbang, Province of Sultan Kudarat up to the straight baselines of the Philippines. On the northwestern part, it shall be demarcated by a line drawn from Little Sta. Cruz Island, Zamboanga City, up to Naris Point, Bataraza, Palawan. On the western part of Palawan, it shall be demarcated by a line drawn from the boundary of Bataraza and Rizal up to the straight baselines of the Philippines.

The final demarcation shall be determined by a joint technical body composed of duly-designated representatives of both Parties, in coordination with the appropriate Central Government agency in accordance with the above guidelines.

COPY NO. 5 OF 15 COPIES

h. Sharing of Minerals on Territorial Waters:
Consistent with paragraphs 5 and 6 of the provisions on Resources, all potential sources of energy, petroleum in situ, hydrocarbon, natural gas and other minerals, including deposits or fields found within the territorial waters, shall be shared between the Central Government and the BJE in favor of the latter through production sharing agreement or economic cooperation agreement.

i. Activities Allowed on Territorial Waters:

(1) The Parties shall have authority to carry out the following activities within the territorial waters:

(a) Exploration and utilization of the natural resources, whether living or non-living, within the territorial waters;
(b) Establishment and use of artificial islands, installations and structures.
(c) Marine scientific research;
(d) Protection and the preservation of the marine environment;
(e) Conservation of living resources;
(f) Regulation of shipping and fishing activities;
(g) Enforcement of police and safety measures, including interdiction of the entry and use of the waters by criminal elements and hot pursuit of suspected criminal elements;
(h) Regulation and control of contraband and illegal entry of prohibited materials and substances, including smuggling; and
(i) Such other measures as the Parties may otherwise mutually agree.

(2) Activities relating to exploration and utilization of non-living resources, as well as paragraphs (c) and (d) of the Authorized Activities will be carried out on a joint basis agreed by the Parties which may be in the form of production sharing agreements or joint development pacts.

j. Establishment of a Joint Commission:

(1) The Parties shall establish a Joint Commission, which shall elaborate the modalities for the implementation and the carrying out of the Authorized Activities and the measures adopted in cases of allegation of breach, and carry out any other functions which may be assigned to it by the Parties for the purpose of implementing the joint management of resources.

(2) The Joint Commission shall consist of one representative from each Party, who are assisted by advisers as may be needed. The conclusions of the Joint Commission shall be adopted by consensus and shall only be recommendatory in nature. Only when the conclusions of the Joint Commission are adopted by the Parties do they become binding on the Parties.

k. Demarcation and Status of Territorial Waters:
The demarcation and status of the BJE territorial waters shall be finally determined together with the demarcation and final status of Category B territory of the BJE.

3. From and after entrenchment of compact rights over the Bangsamoro homeland and the territorial jurisdictions for associative governance shall likewise embrace those under proclamation for agricultural and human settlements intended for the Bangsamoro people, all alienable and disposable lands, pasture lands, timberlands together with all existing civil and military reservations, parks, old growth or natural forests declared as forest reserves, watersheds, mangroves, fishponds, wetlands, marshes, inland bodies of water; and all bays, straits and channels found within the BJE.

4. All territorial and geographic areas in Mindanao and its adjacent islands including Palawan, and the Sulu archipelago that have been declared recognized, and/or delineated as ancestral domain and ancestral land of the Bangsamoro people as their geographic areas, inclusive of settlements and reservations, may be formed or constituted into political subdivisions of the Bangsamoro territorial jurisdictions subject to the principles of equality of peoples and mutual respect and to the protection of civil, political, economic, and cultural rights in their respective jurisdictions.

5. For purposes of territorial delimitation, the Parties have agreed to the joint determination of geographic areas encompassed within the territorial borders of the Bangsamoro homeland and territory based on the technical maps and data submitted by both sides as provided above.

RESOURCES

1. The BJE is empowered with authority and responsibility for the land use, development, conservation and disposition of the natural resources within the homeland. Upon entrenchment of the BJE, the land tenure and use of such resources and wealth must reinforce their economic self-sufficiency. Among the purposes or measures to make progress more rapid are:

   a. Entry into joint development, utilization, and exploitation of natural resources designed as commons or shared resources, which is tied up to the full setting of appropriate institution, particularly affecting strategic minerals;

   b. Stimulation of local economy by a range of mechanism, in particular the need to address unemployment and improvement of living conditions for the population in the BJE;

not include aggression against the Government of the Republic of the Philippines, provided, further that it shall remain the duty and obligation of the Central Government to take charge of external defense. Without prejudice to the right of the Bangsamoro juridical entity to enter into agreement and environmental cooperation with any friendly country affecting its jurisdiction, it shall include:

a. The option to establish and open Bangsamoro trade missions in foreign countries with which it has economic cooperation agreements; and

b. The elements bearing in mind the mutual benefits derived from Philippine archipelagic status and security.

And, in furtherance thereto, the Central Government shall take necessary steps to ensure the BJE's participation in international meetings and events, e.g. ASEAN meetings and other specialized agencies of the United Nations. This shall entitle the BJE's participation in Philippine official missions and delegations that are engaged in the negotiation of border agreements or protocols for environmental protection, equitable sharing of incomes and revenues, in the areas of sea, seabed and inland seas or bodies of water adjacent to or between islands forming part of the ancestral domain, in addition to those of fishing rights.

5. Jurisdiction and control over, and the right of exploring for, exploiting, producing and obtaining all potential sources of energy, petroleum, in situ, fossil fuel, mineral oil and natural gas, whether onshore or offshore, is vested in the BJE as the party having control within its territorial jurisdiction, provided that in times of national emergency, when public interest so requires, the Central Government may, during the emergency, for a fixed period and under reasonable terms as may be agreed by both Parties, temporarily assume or direct the operations of such strategic resources.

6. The BJE take or profit split from total production shall be shared with the Central Government on a percentage ratio of 75:25 in favor of the BJE. All royalties, bonuses, taxes, charges, custom duties or imposts on natural resources and mineral resources shall be shared by the Parties on a percentage ratio of 75:25 in favor of the BJE.

7. The legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenures, or their marginalization shall be acknowledged. Whenever restoration is no longer possible, the GRP shall take effective measures or adequate reparation collectively beneficial to the Bangsamoro people, in such quality, quantity and status to be determined mutually by both Parties.

8. All proclamations, issuances, policies, rules and guidelines declaring old growth or natural forests and all watersheds within the BJE as forest reserves shall continue to

remain in force until otherwise modified, revised or superseded by subsequent policies, rules and regulations issued by the competent authority under the BJE.

9. Forest concessions, timber licenses, contracts or agreements, mining concessions, Mineral Production and Sharing Agreements (MPSA), Industrial Forest Management Agreements (IFMA), and other land tenure instruments of any kind or nature whatsoever granted by the Philippine Government including those issued by the present ARMM shall continue to operate from the date of formal entrenchment of the BJE unless otherwise expired, reviewed, modified and/or cancelled by the latter.

10. The Parties recognize an immediate need to establish a five-member BJE economic-expert mission (the "Mission") bearing in mind that the functioning of the economy and the operation of institutions involve financial and other resource management as well as parallel or complementary means, by which the Bangsamoro Development Agency (BDA) will manage and administer resources acquired for the above purposes, especially in coordinating strategies and programs for cooperation in all fields.

11. The Mission acts as a link in the conduct of BJE's associative parallel relationships and shall cooperate fully with all organizations involved in implementation of the peace settlement. It shall launch a plan and joint international appeal for the reparation and development of the conflict affected areas in Mindanao. Persons appointed thereto must be familiar with the specific economic, political and legal characteristics in the Mindanao-Sulu-Palawan region and must possess recognized competence, integrity, and high moral standing.

12. Cognizant that the Mission will benefit from international expertise, both the Central Government and the BJE hereby join the Third Party facilitator in inviting international funding institutions or equivalent entities for reconstruction and development to appoint two members and to designate one as the Chairman. The BJE shall designate one member as Co-Chairman. The remaining two members shall each be designated by the Central Government and the BJE.

GOVERNANCE

1. The recognition and peaceful resolution of the conflict must involve consultations with the Bangsamoro people free of any imposition in order to provide chances of success and open new formulas that permanently respond to the aspirations of the Bangsamoro people.

2. The ultimate objective of entrenching the Bangsamoro homeland as a territorial space is to secure their identity and posterity, to protect their property rights and resources as well as to establish a system of governance suitable and acceptable to them as a distinct dominant people. The Parties respect the freedom of choice of the indigenous peoples.

3. The Parties agree to invite a multinational third - party to observe and monitor the actual implementation of the comprehensive compact which will embody the details for the effective enforcement of this Agreement. The participation of the third – party shall not in any way affect the status of the relationship between the Central Government and the BJE.

4. The relationship between the Central Government and the BJE shall be associative characterized by shared authority and responsibility with a structure of governance based on executive, legislative, judicial and administrative institutions with defined powers and functions in the Comprehensive Compact. A period of transition shall be established in a Comprehensive Compact specifying the relationship between the Central Government and the BJE.

5. In the context of implementing prior and incremental agreements between the GRP and MILF, it is the joint understanding of the Parties that the term "entrenchment" means, for the purposes of giving effect to this transitory provision, the creation of a process of institution building to exercise shared authority over territory and defined functions of associative character.

6. The modalities for the governance intended to settle the outstanding negotiated political issues are deferred after the signing of the MOA-AD.

   The establishment of institutions for governance in a Comprehensive Compact, together with its modalities during the transition period, shall be fully entrenched and established in the basic law of the BJE. The Parties shall faithfully comply with their commitment to the associative arrangements upon entry into force of the Comprehensive Compact.

7. The Parties agree that the mechanisms and modalities for the actual implementation of this MOA-AD shall be spelt out in the Comprehensive Compact to mutually take such steps to enable it to occur effectively.

   Any provisions of the MOA-AD requiring amendments to the existing legal framework shall come into force upon signing of a Comprehensive Compact and upon effecting the necessary changes to the legal framework with due regard to non derogation of prior agreements and within the stipulated timeframe to be contained in the Comprehensive Compact.

8. The Parties agree that the BJE shall be empowered to build, develop and maintain its own institutions, inclusive of, civil service, electoral, financial and banking, education, legislation, legal, economic, and police and internal security force, judicial system and correctional institutions, necessary for developing a progressive Bangsamoro society, the details of which shall be discussed in the negotiation of the Comprehensive Compact.

9. The Parties further agree to undertake activities which will enhance the capacity of the government institutions during the transition through technical assistance information-sharing and human resource development.

10. Matters concerning the details of the agreed consensus points on Governance not covered under this Agreement shall be deferred to, and discussed during the negotiations of the Comprehensive Compact.

IN WITNESS WHEREOF, the undersigned, being the representatives of the Parties hereby affix their signatures.

Done this 5th day of August, 2008 in Kuala Lumpur, Malaysia.

FOR THE GRP:	FOR THE MILF:
RODOLFO C. GARCIA Chairman GRP Peace Negotiating Panel	MOHAGHER IQBAL Chairman MILF Peace Negotiating Panel

WITNESSED BY:

DATUK OTHMAN BIN ABD RAZAK
Special Adviser to the Prime Minister

IN THE PRESENCE OF:

ALBERTO G. ROMULO Secretary of Foreign Affairs Republic of the Philippines	DATO' SERI UTAMA DR. RAIS BIN YATIM Minister of Foreign Affairs Malaysia

Initialed by:

Sec. Rodolfo Garcia

Sec. Hermogenes Esperon

Mohagher Iqbal

Witnessed by:

Datuk Othman bin Abd Razak

Dated 27 July 2008

COPY NO. 5 OF 15 COPIES

I. The Memorandum of Agreement (MOA)

a. A very significant step toward affirmatively addressing historical inequities and aberrations that impeded the full realization of the aspirations of the Bangsamoro.
b. Enhances the present playing field in Mindanao to benefit all people of Mindanao
c. Redefines an acceptable geographical area for Autonomous Region for Muslim Mindanao (ARMM) or Bangsamoro Juridical Entity (BJE) not thru use of force but thru lawful means, dialogues and partnership.
d. Hoped to bring about mutually acceptable and equitable sharing of resources.
e. Will enable Bangsamoro leadership and put in place mechanics and structures for effective/efficient governance in BJE.

II. Way Ahead

a. Plebiscite within twelve months after MOA signing to determine new geographic area.
b. Vigorously pursue Comprehensive Compact/Final Peace Agreement (15 months)
c. Determined march toward Land of Promise and Strong Republic

1. The third substantive aspect of the GRP-MILF negotiations is Ancestral Domain, apart from the Security and Rehabilitation and Development aspects. This has been the subject of intense discussions running four years now at the negotiating table.

2. In discussing Ancestral Domain, the GRP and MILF have earlier agreed to pursue the discussions according to four sub-topics (or strands), namely: Concept, Territory, Resources and Governance. Through these strands, both sides have gone beyond treating the issue of Ancestral Domain as a question of mere land ownership. Rather, we have forged a common objective of addressing the subject in terms of acknowledging the identity of the Bangsamoro people, affirming their rights over a homeland and its resources, and providing them the opportunity to establish a system of governance suitable and acceptable to them as a people possessing a unique history and culture.

Concept

3. Ancestral Domain, as a concept in the context of the GRP-MILF Peace Negotiations, is more than just land and its proprietary ownership. The MOA also has items that explicitly define the Bangsamoro people's identity and acknowledge their roots from a self-governing society in pre-Colonial Philippines. At the heart of the concept of AD is respect and acknowledgement, not only of the Bangsamoro people's rights and freedoms, but also vested property rights and religious and cultural liberties of other peoples.

Territory

4. The strand on Territory defines the area of composition of the BJE, the core of which is the present geographic jurisdiction of the ARMM, including areas composed of [illegible] Barangays adjacent to the ARMM and found in the agreed Provinces and those barangays in agreed cities for accession to the present ARMM after a plebiscite – including those that already voted "yes" in a previous plebiscite. There are areas that have also been identified for intensive development assistance.

5. Arrangements over fluvial and maritime domains consist of the internal and territorial waters of the BJE.

Resources

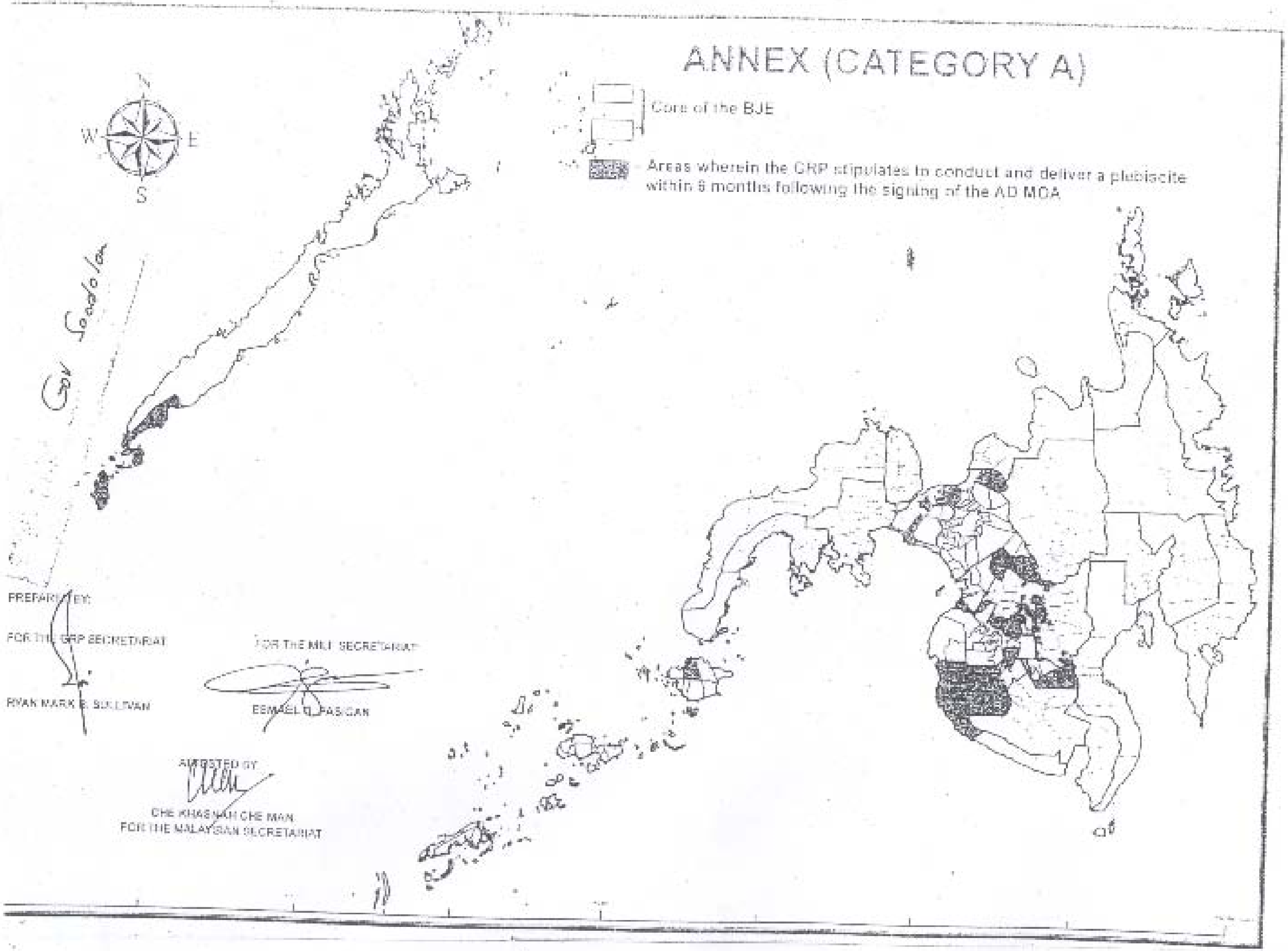
6. The strand on Resources grants authority to the BJE on the use and development of resources found within BJE jurisdiction. More significantly, it sets the reasonable sharing with the Central Government of profit from exploration of potential sources of energy found within BJE jurisdiction. The BJE shall have the power to conduct economic relations to maximize its capacity to fully develop.

Governance

7. The last strand on Governance laid down the mechanisms and modalities to implement the MOA on AD, the details of which shall be outlined in the Comprehensive Compact.

8. The Memorandum of Agreement on Ancestral Domain (MOA AD) was finalized and initialed by both panels on 27 July 2008 and will be formally signed on 5 August 2008 in Malaysia. The signing will signal the start of formal talks for the negotiation of details of the Comprehensive Compact.

ANNEX (CATEGORY A)



PREPARED BY:

FOR THE GRP SECRETARIAT

RYAN MARK E. SULLIVAN

FOR THE MILF SECRETARIAT

ESMAEL G. PASIGAN

ATTESTED BY:

CHE KHASNAH CHE MAN
FOR THE MALAYSIAN SECRETARIAT